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April 24, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> St., S.W., Room CY-B204  
Washington, D.C. 20554

Re: Comments of Sprint Communications Company L.P. on Application by  
Southwestern Bell for Provision of In-Region, InterLATA Services in Missouri,  
CC Docket. No. 01-88

Dear Ms. Salas:

Enclosed please find the original, four copies and an electronic version of the Comments of Sprint Communications Company L.P. on Southwestern Bell's Section 271 Application in the above-referenced proceeding. At the same time, paper copies are being provided to the Common Carrier Bureau, the Department of Justice, the Missouri Public Service Commission, and the International Transcription Service, as indicated on the attached certificate of service.

Please do not hesitate to telephone me at 202/429-4781 if you have any questions regarding this submission. Thank you.

Sincerely,



A. Renée Callahan

Enclosures

cc: Attached service list

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of	)	
	)	
Joint Application by SBC Communications	)	
Inc., Southwestern Bell Telephone Company,	)	
and Southwestern Bell Communications	)	CC Docket No. 01-88
Services, Inc. d/b/a Southwestern Bell Long	)	
Distance for Provision of	)	
In-Region InterLATA Services	)	
in Missouri	)	

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.  
ON SOUTHWESTERN BELL'S SECTION 271 APPLICATION**

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Dated: April 24, 2001

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**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.  
ON SOUTHWESTERN BELL'S SECTION 271 APPLICATION**

Sprint Communications Company L.P. ("Sprint") hereby files its comments regarding the above-captioned application of Southwestern Bell ("SWBT") for authorization to provide in-region, interLATA services in Missouri.<sup>1</sup> The application fails to meet the requisite standards of Section 271 and cannot be granted at this time.

**I. INTRODUCTION AND SUMMARY**

The application comes at a time when the 1996 Telecommunications Act's policies of stimulating competitive entry through resale and unbundled network elements is threatening to fail. Industry participants that once planned their entry on these bases have reversed course. Facilities-based competitive entrants are experiencing financial difficulties on a widespread basis. Both large and small CLECs have been unable to raise additional capital needed to expand, and in

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<sup>1</sup> See Joint Application by SBC Communications Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Missouri, CC Dkt. No. 01-88 (filed Apr. 4, 2001) ("SWBT Br.").

some cases, sustain their operations. In this context, SBC's portrayal of widespread competition in the state of Missouri is simply surreal.

Sprint strongly believes that the Commission was mistaken in its action earlier this year granting SWBT's application to provide interLATA services in Kansas and Oklahoma, and has appealed that Order. For many of the same reasons advocated by Sprint and others for Kansas and Oklahoma (the FCC's rejection of which Sprint respectfully urges constituted reversible error), the Missouri application fails to meet the requirements of Section 271. Rather than reargue these points, Sprint's comments focus primarily on the unlawful rates that control in Missouri -- rates that are so unreasonable and so riddled with uncertainty that they cannot rationally be said to permit efficient entry. If the Commission is at all interested in permitting entry through UNEs, it must hold the line here and require rate setting in compliance with the congressional mandates.

In granting Kansas and Oklahoma, the FCC noted that its order represented "the first time we have approved a section 271 application for a more rural state."<sup>2</sup> Although the Commission did not expressly state that it was lowering the bar for rural states, it did note that under its new approach "more rural states can conduct successful section 271 reviews without overwhelming their regulatory resources. . . ." Kansas/Oklahoma Order ¶ 2. Sprint respectfully observes that, to the extent the rural or urban nature of a state is or can legally be relevant, Missouri is not a rural state relative to Kansas and Oklahoma.

Whereas Kansas has approximately 2.69 million people and Oklahoma 3.45 million, Missouri has 5.6 million residents. U.S. Census Bureau, Census 2000. Missouri's population

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<sup>2</sup> Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, InterLATA Services in Kansas and Oklahoma, CC Dkt. No. 00-217, Memorandum Opinion and Order ¶ 2 (rel. Jan. 22, 2001) (FCC 01-29) ("Kansas/Oklahoma Order").

ranks it 17<sup>th</sup> among all U.S. states. Similarly, the FCC reports that Missouri has 3.4 million switched access lines, while Kansas and Oklahoma have 1.4 and 1.8 million, respectively. FCC Statistics of Communications Common Carriers, Table 2.3 (2000) (as of December 31, 1999). Both Kansas City and St. Louis ranked among the top 15 Most Wired Cities List this year. See Nielsen/Net Ratings (the survey measured the percentage of households having access to the Internet from a personal computer at home). Missouri is also home to 15 of the Fortune 500 companies. The question is whether these significant economic centers and population totals will be able to enjoy the benefits of local competitive choices.

**II. SWBT's Application Is Replete With Interim Prices For UNEs And Interconnection That Chill Competitive Entry, In Violation Of Section 271 Of The Act.**

Section 271 requires SWBT to provide access to unbundled network elements ("UNEs") and interconnection in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(i), (ii). Sections 251(c)(3) and 252(d)(1) in turn require that SWBT provide interconnection and unbundled access to UNEs at cost-based rates and on terms and conditions that are just, reasonable, and nondiscriminatory. Id. §§ 251(c)(3), 252(d)(1). "The Act vests in the Commission the *exclusive responsibility* for determining whether a BOC has priced . . . unbundled network elements . . . in accordance with the pricing requirements set forth in section 252(d) and, therefore, whether the BOC has fully implemented the competitive checklist."<sup>3</sup> As demonstrated below, the pricing shown for Missouri cannot reasonably be said to comply with this standard. The prices are not cost-based, and it is wholly uncertain when TELRIC rates will actually be established for UNEs in Missouri.

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<sup>3</sup> Application of Ameritech Michigan to Provide In-region, InterLATA Services in Michigan, 12 FCC Rcd 20543, ¶ 282 (1997) ("Michigan Order") (emphasis added).

**A. The Commission Has Previously Indicated That, In Circumstances Such As Those Present Here, Interim Rates Are Unacceptable.**

The FCC has ruled that the issue of whether interim rates are acceptable in a BOC's Section 271 application should be addressed on a case-by-case basis.<sup>4</sup> The Commission has recognized that "interim rates create uncertainty," but that they may be tolerable "at least for the time being" where that uncertainty is demonstrably minimized. See New York Order ¶ 258. In Texas, the Commission articulated a three prong test to determine whether it is acceptable to have interim rates as part of a Section 271 application, noting that where "an interim solution to a particular rate dispute is [1] reasonable under the circumstances, [2] the state commission has demonstrated its commitment to [the FCC's] pricing rules, and [3] provision is made for refund or true-ups once permanent rates are set," interim rates may be acceptable.<sup>5</sup>

In these prior Orders, the FCC expressed its willingness to allow a small number of rates to be assessed on an interim basis because of the pragmatic recognition that rates will often be in some state of flux, as new UNEs are identified and as state proceedings evolve. In Kansas and Oklahoma, for example, the FCC rejected claims of uncertainty associated with interim rates for collocation, loop conditioning, line sharing and line splitting. The FCC stated that "based on the permanent rates" the two state commissions had set, "we have confidence that the Kansas and Oklahoma Commissions will set permanent rates that are in compliance with the Act and our rules." Kansas/Oklahoma Order ¶ 222. Two crucial differences exist for Missouri. First, the extent of interim rates in Missouri is unprecedented. Indeed, virtually all of the rates in the M2A

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<sup>4</sup> Application by Bell Atlantic New York for Authorization to Provide In-region, InterLATA Service in the State of New York, 15 FCC Rcd 3953, ¶ 258 (1999) ("New York Order").

<sup>5</sup> Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance to Provide In-region, InterLATA Services in Texas, 15 FCC Rcd 18354, ¶¶ 88, 241 (2000); see also Kansas/Oklahoma Order ¶ 238; New York Order ¶ 258.

are interim and/or subject to great uncertainty, as discussed below. Second, in light of the Eighth Circuit's recent decision prohibiting the Missouri Public Service Commission ("MPSC") from setting rates based on TELRIC, the Commission cannot rely on the MPSC's "commitment" to follow TELRIC pricing rules.

SWBT's rates in Missouri can be loosely grouped as follows:

*TO-97-40 Rates* -- These rates are derived from the AT&T/SWBT arbitration in which the MPSC developed "permanent" rates for UNEs in July 1997. The rates were subsequently incorporated into other CLECs' interconnection agreements and are also the rates in SWBT's M2A. Staff's Summary of Evidence, Comments, and Positions at 13 (MPSC Dec. 26, 2000) ("Staff Summary"). SWBT has since successfully appealed these rates and ultimately obtained an order from the Eighth Circuit declaring them to be unlawful -- along with the entirety of the agreement in which they were included -- because they were based on the FCC's TELRIC pricing rules.<sup>6</sup> Although the issuance of the mandate in this case has been stayed, full resolution is months if not years away. A decision by the Supreme Court leaving any ambiguity in the *Iowa Utilities II* proceeding leaves open the possibility that the Eighth Circuit will still require revision by the MPSC of SWBT's UNE and interconnection rates.<sup>7</sup>

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<sup>6</sup> Final Arbitration Order, AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-97-40 (MPSC July 31, 1997) (App. G, Tab 11), *rev'd and remanded sub nom.*, Southwestern Bell Tel. Co. v. Missouri Pub. Serv. Comm'n, 236 F.3d 922 (8th Cir. 2001) ("*Southwestern Bell*"). *stay granted*, No. 99-3833 (8th Cir. Feb. 7, 2001).

<sup>7</sup> In January, the Supreme Court granted petitions for *certiorari* requesting review of the Eighth Circuit's vacatur of the Commission's TELRIC rules. Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications v. FCC*, 69 U.S.L.W. 3495 (U.S. Jan. 22, 2001) (No. 00-511) ("*Iowa Utilities II*"); *see also* Iowa Utils. Bd. v. FCC, No. 96-3321, Order Granting Motion for Partial Stay of the Mandate (8th Cir. Sept. 22, 2000).



*TO-98-115 Rates* -- These are additional UNE rates that have been interim since December 1997, and have never been made permanent.<sup>8</sup> These rates arose out of the second phase of the AT&T arbitration and are generally miscellaneous UNE rates, *e.g.*, OC3/OC12/OC48 Transport, nonrecurring charges for vertical features and signaling elements, service order charges, cross-connects, etc.<sup>9</sup> The MPSC's procedures began in September 1997, and, in December 1997 interim rates were set, along with a procedure for establishing permanent rates. After a hearing in 1998, the MPSC issued an order in December 2000 indicating it wanted to move "expeditiously to establish permanent rates."<sup>10</sup> Notwithstanding the passage of more than 3 years, the rates are still not permanent and Docket 01-438 has been opened to review the rates. They were also the subject of SWBT's appeal in *Southwestern Bell* and thus have been vacated (subject to stay of the issuance of the mandate) by the Eighth Circuit. Indeed, the MPSC has recognized as much, noting two months ago that "the recent court decision [in *Southwestern Bell*] has created uncertainty as to the future of these prices." *MPSC Interim Order* at 5.

*Other UNEs* -- There are 95 UNE rates that neither phase of the AT&T/SWBT arbitration addressed. *Id.* For these remaining UNEs, the M2A reflects the temporary adoption of the Texas

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<sup>8</sup> Application of Southwestern Bell Telephone Co. to Provide Notice of Intent to File an Application for Authorization to Provide In-region, InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, Interim Order Regarding the Missouri Interconnection Agreement at 5 (MPSC Feb. 13, 2001) ("*MPSC Interim Order*").

<sup>9</sup> See generally AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-98-115, Report and Order (MPSC Dec. 23, 1997) (App. G, Tab 20).

<sup>10</sup> AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell, Case No. TO-98-115, Order Directing Filing at 2 (MPSC Dec. 12, 2000) <[www.psc.state.mo.us/orders/12128115.htm](http://www.psc.state.mo.us/orders/12128115.htm)>.

UNE prices on an interim basis subject to true up. Id. at 6-7. These 95 UNEs will be reviewed in the new Commission Docket 01-438 as well.<sup>11</sup>

*Collocation/Loop Conditioning/Line Sharing.* The Missouri Commission has opened up three other dockets, 01-439 (loop conditioning), 01-440 (line sharing/splitting), and TT-01-298 (collocation) to review these interim rates. Until permanent rates are determined, SWBT will use the Texas terms and conditions, with rates subject to true-up.

As reflected above, Missouri rates exhibit the use of interim and unstable 'fixes' throughout all material terms of entry. No amount of patching, through true-ups or last-minute concessions by the applicant, can serve to satisfactorily dissipate the overhang these temporary rates create for possible new entrants.<sup>12</sup>

**B. The Rates From TO-97-40 Are, At Best, Interim, And Cannot Be Relied Upon By SWBT As "Permanent" Rates.**

As noted, the rates from Case No. TO-97-40 were subsequently incorporated into other CLEC interconnection agreements and are also the rates SWBT relies upon in its M2A. Staff Summary at 13. SWBT has indicated that it will abide by those prices "for the duration of the

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<sup>11</sup> It is noteworthy that SWBT has chosen to selectively rely on Texas rates except where some ostensible basis for assessing higher interim rates can be found.

<sup>12</sup> Indeed, the true-ups themselves are insufficient to guard against future abuse by SWBT. For example, although SWBT was directed to limit the true-up period to six months pursuant to the *MPSC Interim Order*, its schedule of UNE prices does not include such a limitation. See AT&T Motion to Reconsider or Clarify Interim Order and Comments Regarding SWBT's M2A Compliance Filing at 6-7 (MPSC Feb. 23, 2001) (citing M2A UNE Pricing Appendix at 11). Moreover, although SWBT included a six month limitation in its physical and virtual collocation appendices, at the same time it unilaterally inserted language that would (1) require payment of any amount due within 30 days after an MPSC order adopting permanent rates, and (2) exclude any period prior to the agreement's effective date (apparently in an attempt to preclude CLECs from recovering refunds of collocation payments based on SWBT's prior excessive ICB rates). See id. at 8-9 (citing M2A Physical Collocation Appendix at 59 and Virtual Collocation Appendix at 11-12). Similar limitations appear in the line sharing and line splitting appendices. Id. at 9 n.6.

M2A, *subject to the Supreme Court's review of the Commission's TELRIC rules.*"<sup>13</sup> Although the FCC has observed that ratemaking can be inherently uncertain because rates and underlying costs are constantly subject to some degree of change,<sup>14</sup> the level of instability here is hardly typical. Here, the rates in issue have been the subject of a U.S. Court of Appeals' decision finding them to be unlawful, and only the grant of *certiorari* by the Supreme Court has served (indirectly) to stay the issuance of the Circuit Court's mandate. To suggest in these rarefied circumstances that this is workaday uncertainty is wrong. The "permanent" rates upon which SWBT relies have as much, if not more, uncertainty surrounding them as those rates officially deemed "interim" by the MPSC.

**C. SWBT's Interim Rates Are Not Reasonable.**

SWBT relies upon the Texas rates as interim Missouri rates for a number of categories, including collocation, line sharing, and loop conditioning charges as well as the "other" 95 UNE rates discussed above. In addition, SWBT discounted the Missouri non-recurring charges ("NRCs") by 25%, in an effort to bring them into line with Texas rates. See MPSC Interim Order at 7. Where a BOC attempts to rely on another state's rates for purposes of establishing a presumption that those rates are TELRIC-compliant, the Commission has indicated that such reliance may be appropriate "if costs are demonstrated to be at or above the costs in the state whose rates were adopted." Massachusetts Order ¶ 22.

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<sup>13</sup> See SWBT Br. at 28 n.32 (citing M2A General Terms and Conditions § 18.2) (emphasis added). The Commission has considered duration to be a critical indicator of whether rates are "permanent." See Kansas/Oklahoma Order ¶ 89 (finding "promotional" rates to be effectively "permanent" because they remained in effect during the term of the x2A).

<sup>14</sup> See Application by Verizon New England Inc. for Authorization to Provide In-region, InterLATA Service in Massachusetts, CC Dkt. No. 01-9, Memorandum Opinion and Order ¶ 36 (rel. Apr. 16, 2001) (FCC 01-130) ("Massachusetts Order") (fact that state commission may change rates in the future or that rates may "evolve over time to reflect new information on cost inputs and changes in technology or market conditions" does not cause an applicant to fail the checklist item today).

A comparison of rates from the M2A, T2A, K2A, and O2A reveals that there are substantial disparities between the Missouri rates and those held to be TELRIC-compliant in past Section 271 orders.

UNE	Missouri	Texas		Kansas		Oklahoma	
	NRC	% MO is higher*	NRC	% MO is higher	NRC	% MO is higher	NRC
2W Digital (urban)	43.33	188%	15.03	188%	15.03	-29%	60.61
Digital Loop to Collo 2W	26.87	469%	4.72	55%	17.29	-11%	30.25
DS1 Trunk Port (urban)	120.35	72%	69.95	-1%	121.50	-16%	144.09
<u>Multiplexing</u>							
VG to DS1	195.00	101%	96.84	101%	96.84	46%	133.59
DS1 to DS3	1029.00	32%	777.51	32%	777.51	32%	777.51
<u>SS7 &amp; Links</u>							
<u>Cross Connects</u>							
STP to Collo DS0	224.85	234%	67.24	198%	75.39	69%	133.02
STP to Collo DS1	192.75	157%	75.12	157%	75.12	65%	116.96

As the Commission has recognized, costs may vary from state-to-state “due to differences in terrain, population density, and labor costs.” Michigan Order ¶ 291. It does not appear that any of these factors explain the magnitude of the differences between SWBT’s rates in Missouri as compared to these other states. For example, a comparison of labor charges in the x2As reveals that the rate for Missouri (\$30.93 per half hour) is less than the comparable rate for Texas (\$42.88), Oklahoma (\$37.11), and Kansas (\$46.76). Other possible benchmarks also indicate that these rate disparities are not cost-based. Using USF estimates for average monthly cost per line,

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\* This column reports what percentage the Missouri rate is of the Texas rate, and is computed by subtracting the Texas rate from the Missouri rate, dividing by the Texas rate, and multiplying by 100 to state a percentage. For example, where the Texas rate is \$15 and the Missouri rate is \$30, this column would report that the Missouri rate is 100% higher than the comparable Texas rate (( $\$30 - \$15$ )/ $\$15 \times 100\%$ ). This example alternately could be described as the Missouri element costing twice as much as the identical Texas element. The same calculation is made for the other columns, with the x2A rate for that state being substituted in the equation.

Missouri's costs do not vary more than 12% from any of the other three states shown.<sup>15</sup>

Similarly, using the differentials from the Commission's Local Competition Order proxy rates,

Missouri's rates should not vary more than 15% from those for Kansas, Oklahoma, and Texas.<sup>16</sup>

The substantially larger disparities between prices in Missouri and Texas, and even Kansas and Oklahoma, suggest that the Missouri rates are neither cost-based nor reasonable.

### III. CONCLUSION

For the foregoing reasons, SWBT's application for Section 271 relief in Missouri should be denied.

Respectfully submitted,

**Sprint Communications Company L.P.**



Leon M. Kestenbaum  
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ITS ATTORNEYS

Dated: April 24, 2001

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<sup>15</sup> Averaging the USF investment input unit costs for total monthly cost per line for SWBT reveals the following average monthly cost per line for Missouri (\$53.63), Kansas (\$51.13), Oklahoma (\$59.56), and Texas (\$47.25). Texas' and Kansas' costs were thus 12% and 5% lower, respectively, than the average monthly cost per line for Missouri, while Oklahoma's costs were 11% higher.

<sup>16</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) (rule codified at 47 C.F.R. § 51.513(c)(1)). The proxy-based monthly loop rates for each state are: Missouri, \$18.32; Kansas, \$19.85; Oklahoma, \$17.63; and Texas, \$15.49. Texas' and Oklahoma's rates are 15% and 4% lower, respectively, than the rate for Missouri, while Kansas' rate is 8% higher.

## CERTIFICATE OF SERVICE

I, S. Anna Sucin, do hereby certify that copies of the Comments of Sprint Communications Company L.P. on Southwestern Bell's Section 271 Application, CC Docket No. 01-88, were hand-delivered on April 24, 2001, unless otherwise indicated, to the following parties:

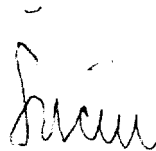
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